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November 19, 2024

VIA ECF

Hon. Leo M. Gordon
United States District Court
District of New Jersey
2 Federal Square
Newark, NJ 07102

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Re: *State of New Jersey v. U.S. Dep't of Transportation et al.*, No. 2:23-cv-03885

Dear Judge Gordon:

I respectfully write on behalf of the State of New Jersey (“New Jersey”) in the immediate aftermath of the MTA’s announcement yesterday that it has approved a revised congestion pricing program that materially differs from the tolling scheme assessed by the FHWA under the National Environmental Policy Act (“NEPA”).¹ The revised scheme imposes a phased tolling rate, beginning with a \$9 peak toll for passenger vehicles in 2025 and increasing to a \$15 peak toll for passenger vehicles by 2031—a scenario never analyzed in the EA.² The MTA took this action *without* any public comment period, *without* any public notice in advance of the vote, and *without* any advance notice to this Court.

The MTA’s sudden announcement only reinforces the infirmities in this environmental review process and underlines the arbitrariness of the FHWA’s “finding of no significant environmental impact” from an unprecedented congestion pricing scheme poised to have seismic effects on the entire region. *First*, the Final EA did not evaluate the phased tolling scheme approved yesterday by the MTA. *Second*, the FHWA refused to consider several reasonable alternatives because they would not generate sufficient revenue to fund the MTA’s \$15 billion capital plan, yet now, the MTA has unilaterally cut the toll rate—and related revenue—by 40% of that originally contemplated.³ *Third*, the MTA’s abrupt change calls into question all other components of the tolling scheme, including the lack of any actual mitigation funding for New Jersey in the plan the FHWA approved (with the MTA promising to provide *de minimis* mitigation

¹ See MTA Press Release, *MTA Board Approves Phasing In the Congestion Relief Zone Toll* (Updated Nov. 18, 2024 3:30 PM ET), <https://new.mta.info/press-release/mta-board-approves-phasing-congestion-relief-zone-toll>.

² See MTA, TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY CENTRAL BUSINESS DISTRICT (CBD) CHARGES, <https://new.mta.info/document/138931>. This revised tolling schedule was released yesterday, *without* any advance public notice, and *without* any period for public comment.

³ Last year, MTA Chair Janno Lieber cautioned that a lower toll would cause “the whole [tolling scheme] . . . to unravel or fall apart.” Stephen Nessen and Clayton Guse, *Don’t Expect Changes to MTA’s Congestion Pricing Even After Final Public Review*, GOTHAMIST (Dec. 8, 2023), <https://gothamist.com/news/changes-to-mtas-congestion-pricing-nyc-nj>.

funding to a few New Jersey communities later from an arbitrarily-capped pool shared with favored New York communities). *Fourth*, the FHWA and MTA claim they will undertake a reevaluation of the revised tolling scheme but have not specified what the scope of the reevaluation will be, when it will be completed, or whether any public comments will be solicited. From the beginning, the MTA and FHWA⁴ have adopted an approve-now, figure-it-out-later approach. That is not the “hard look” that federal law requires.

This revised congestion pricing scheme is starting the evening of January 5, 2025, which only underscores the need for a decision here. We therefore respectfully request that Your Honor now decide this case and ask when the parties can expect a decision so they can plan accordingly. To the extent the Court wishes anything further from the parties or would be amenable to an emergency application, we stand ready to do so.

Respectfully,

/s/ Randy M. Mastro

Randy M. Mastro

cc: All counsel of record (via ECF)

⁴ The FHWA has yet to update the court regarding its position; however, press reports indicate that the FHWA is in communication with the MTA and on board with its plan to barrel ahead. Ramsey Khalifeh and Stephen Nessen, *MTA Seeks Speedy Approval from Feds for NYC’s Congestion Pricing Tolls*, GOTHAMIST (Nov. 18, 2024), <https://gothamist.com/news/mta-seeks-speedy-approval-from-feds-for-nycs-congestion-pricing-tolls> (“Federal Highway Administration officials in an emailed statement said they’re working ‘expeditiously’ to finalize the approval for the tolls.”).